

104TH CONGRESS
1ST SESSION

S. 1286

To amend the Solid Waste Disposal Act regarding management of remediation waste, certain recyclable industrial materials, and certain products, co-products, and intermediate products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29 (legislative day, SEPTEMBER 25), 1995

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Solid Waste Disposal Act regarding management of remediation waste, certain recyclable industrial materials, and certain products, co-products, and intermediate products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REMEDIATION WASTE.**

4 (a) DEFINITIONS.—Section 1004 of the Solid Waste
5 Disposal Act (42 U.S.C. 6903) is amended by adding at
6 the end the following:

7 “(42) DEBRIS.—The term ‘debris’—

8 “(A) means—

1 “(i) a solid manufactured object ex-
2 ceeding a 60 millimeter particle size;

3 “(ii) plant or animal matter; and

4 “(iii) natural geologic material; but

5 “(B) does not include material that the
6 Administrator may exclude from the meaning of
7 the term by regulation.

8 “(43) IDENTIFIED CHARACTERISTIC WASTE.—
9 The term ‘identified characteristic waste’ means a
10 solid waste that has been identified as having the
11 characteristics of hazardous waste under section
12 3001.

13 “(44) LISTED WASTE.—The term ‘listed waste’
14 means a solid waste that has been listed as a haz-
15 ardous waste under section 3001.

16 “(45) MEDIA.—The term ‘media’ means ground
17 water, surface water, soil, and sediment.

18 “(46) REMEDIATION ACTIVITY.—The term ‘re-
19 mediation activity’ means the remediation, removal,
20 containment, or stabilization of—

21 “(A) solid waste that has been released to
22 the environment; or

23 “(B) media and debris that are contami-
24 nated as a result of a release.

1 “(47) REMEDIATION WASTE.—The term ‘reme-
2 diation waste’ means—

3 “(A) solid and hazardous waste that is
4 generated by a remediation activity; and

5 “(B) debris and media that are generated
6 by a remediation activity and contain a listed
7 waste or identified characteristic waste.

8 “(48) STATE VOLUNTARY REMEDIATION PRO-
9 GRAM.—The term ‘State voluntary remediation pro-
10 gram’ means a program established by a State that
11 permits a person to conduct remediation activity at
12 a facility under general guidance or guidelines with-
13 out being subject to a State order or consent agree-
14 ment specifically applicable to the person.”.

15 (b) IDENTIFICATION AND LISTING.—Section 3001 of
16 the Solid Waste Disposal Act (42 U.S.C. 6921) is amend-
17 ed by adding at the end the following:

18 “(j) REMEDIATION WASTE.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), a person that manages remediation waste
21 that is an identified characteristic waste or listed
22 waste or that contains an identified characteristic
23 waste or listed waste shall be subject to the require-
24 ments of this subtitle (including regulations issued
25 under this subtitle, including the regulation for cor-

1 rective action management units published in section
2 264.552, Code of Federal Regulations, and the regu-
3 lation for temporary units published in section
4 264.553, Code of Federal Regulations, or any suc-
5 cessor regulation).

6 “(2) EXCEPTIONS.—

7 “(A) REQUIREMENTS UNDER SECTION
8 3004.—Media and debris generated by a remedi-
9 ation activity that are identified characteristic
10 wastes or listed wastes or that contain an iden-
11 tified characteristic waste or a listed waste shall
12 not be subject to the requirements of section
13 3004 (d), (e), (f), (g), (j), (m), or (o).

14 “(B) PERMIT REQUIREMENTS.—No Fed-
15 eral, State, or local permit shall be required for
16 the treatment, storage, or disposal of remedi-
17 ation waste that is conducted entirely at the fa-
18 cility at which the remediation takes place.

19 “(3) REMEDIATION WASTE SUBJECT TO OR-
20 DERS, CONSENT AGREEMENTS, VOLUNTARY REMEDI-
21 ATION PROGRAMS, AND OTHER MECHANISMS.—

22 “(A) REQUIREMENTS NOT APPLICABLE.—
23 Notwithstanding paragraph (1), a person that
24 manages remediation waste that—

1 “(i) is identified characteristic waste
2 or listed waste or that contains an identi-
3 fied characteristic waste or listed waste;
4 and

5 “(ii) is subject to a Federal or State
6 order, Federal or State consent agreement,
7 a State voluntary remediation program, or
8 such other mechanism as the Adminis-
9 trator considers appropriate,
10 shall not be subject to the requirements of this
11 subtitle (including any regulation under this
12 subsection) unless the requirements are speci-
13 fied in the Federal or State order, Federal or
14 State consent agreement, State voluntary clean-
15 up program, or other mechanism, as determined
16 by the Administrator.

17 “(B) ENFORCEMENT.—Unless other en-
18 forcement procedures are specified in the order,
19 consent agreement, or other mechanism, a per-
20 son described in subparagraph (A) (except a
21 person that manages remediation waste under a
22 State voluntary remediation program) shall be
23 subject to enforcement of the requirements of
24 the order, consent agreement, or other mecha-

1 nism by use of enforcement procedures under
2 section 3008.”.

3 (c) REGULATION.—Not later than 180 days after the
4 date of enactment of this Act, the Administrator shall
5 issue a regulation implementing section 3001(j) of the
6 Solid Waste Disposal Act, as added by subsection (b).

7 **SEC. 2. EXCLUSION OF CERTAIN RECYCLABLE INDUSTRIAL**
8 **MATERIALS AND CERTAIN PRODUCTS, CO-**
9 **PRODUCTS, AND INTERMEDIATE PRODUCTS.**

10 (a) DEFINITIONS.—Section 1004 of the Solid Waste
11 Disposal Act (42 U.S.C. 6903), as amended by section
12 1(a), is amended by adding at the end the following:

13 “(49) CO-PRODUCT.—The term ‘co-product’
14 means a combination of 2 or more materials inten-
15 tionally produced from a manufacturing or recycling
16 operation for commercial use.

17 “(50) INTERMEDIATE MATERIAL.—The term
18 ‘intermediate material’ means a material that results
19 from a manufacturing process the design of which
20 contemplates further processing of the material by
21 the manufacturer or by a toll processor to produce
22 a product or an intermediate product.

23 “(51) MANUFACTURING.—The term ‘manufac-
24 turing’ means the use of a virgin material or other
25 feedstock to produce a product, co-product, or inter-

1 mediate product (including all associated ancillary
2 operations) in which—

3 “(A) the process uses the appropriate
4 equipment to produce the intended product, co-
5 product, or intermediate product;

6 “(B) the virgin material or other feedstock
7 used in the process meets commercial specifica-
8 tions;

9 “(C) the virgin material or other feedstock
10 is handled in a manner that is designed to min-
11 imize loss of the virgin material or feedstock;

12 “(D) a contract or record is established by
13 the manufacturer to record or document the re-
14 ceipt and use of the virgin material or other
15 feedstock and the use or sale of the product, co-
16 product, or intermediate product that is pro-
17 duced; and

18 “(E) the process produces a product, co-
19 product, or intermediate product that meets
20 commercial specifications.

21 “(52) PRODUCT.—The term ‘product’ means a
22 material that is produced from a manufacturing or
23 recycling operation for commercial use.

1 “(53) RECYCLABLE INDUSTRIAL MATERIAL.—

2 The term ‘recyclable industrial material’ means a
3 material that—

4 “(A) would constitute an identified char-
5 acteristic waste or listed waste except for the
6 application of section 3024(a); and

7 “(B) is intended by a manufacturer, com-
8 mercial enterprise, or recycler for recycling by
9 use, reuse, or reclamation.

10 “(54) TOLL PROCESSOR.—The term ‘toll proc-
11 essor’ means a person that performs any of a variety
12 of manufacturing processes on material owned by a
13 manufacturer.”.

14 (b) EXCLUSION FROM REGULATION OF CERTAIN RE-
15 CYCLABLE INDUSTRIAL MATERIALS AND CERTAIN PROD-
16 UCTS, CO-PRODUCTS, AND INTERMEDIATE PRODUCTS.—
17 Subtitle C of the Solid Waste Disposal Act (42 U.S.C
18 6921 et seq.) is amended by adding at the end the follow-
19 ing:

20 **“SEC. 3024. EXCLUSION FROM REGULATION OF CERTAIN**
21 **RECYCLABLE INDUSTRIAL MATERIALS AND**
22 **CERTAIN PRODUCTS, CO-PRODUCTS, AND IN-**
23 **TERMEDIATE PRODUCTS.**

24 “(a) CERTAIN RECYCLABLE INDUSTRIAL MATE-
25 RIALS.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), a person that manages recyclable indus-
 3 trial material shall not be subject to the require-
 4 ments of this subtitle (including regulations).

5 “(2) EXCEPTIONS.—The following recyclable in-
 6 dustrial materials shall be subject to the require-
 7 ments of this subtitle (including regulations) unless
 8 the Administrator determines that regulation under
 9 this subtitle is unnecessary:

10 “(A) A recyclable industrial material
 11 that—

12 “(i) is burned for energy recovery or
 13 used to produce fuel; or

14 “(ii) is otherwise contained in fuel,
 15 if burning for energy recovery or use to produce
 16 fuel is not a normal use of the recyclable indus-
 17 trial material.

18 “(B) A recyclable industrial material
 19 that—

20 “(i) is applied to or placed on land in
 21 a manner that constitutes disposal, if such
 22 use is not a normal use of the recyclable
 23 industrial material; or

24 “(ii) is used to produce a product that
 25 is applied to or placed on land or is con-

1 tained in a product that is applied to or
2 placed on land, if such use of the recycla-
3 ble industrial material is not a normal use
4 of the recyclable industrial material.

5 “(C) A recyclable industrial material that
6 is identified by the Administrator by regulation
7 as being inherently wastelike.

8 “(b) CERTAIN PRODUCTS, CO-PRODUCTS, AND IN-
9 TERMEDIATE PRODUCTS.—A product, co-product, or in-
10 intermediate product shall not be considered to be a solid
11 waste for the purposes of this Act unless the product, co-
12 product, or intermediate product—

13 “(1) is burned for energy recovery or used to
14 produce fuel or is contained in fuel, if such use is
15 not a normal use of the product, co-product, or in-
16 termediate product;

17 “(2) is used in a manner constituting disposal
18 or used to produce a product or is contained in a
19 product that is used in a manner constituting dis-
20 posal, if such use is not a normal use of the product,
21 co-product, or intermediate product; or

22 “(3) is identified by the Administrator by regu-
23 lation as being inherently wastelike.”.

1 **SEC. 3. REGULATION OF CERTAIN RECYCLABLE INDUS-**
2 **TRIAL MATERIALS.**

3 The Solid Waste Disposal Act (42 U.S.C. 9601 et
4 seq.) is amended by adding at the end the following:

5 **“Subtitle K—Recyclable Industrial**
6 **Material**

7 **“SEC. 12001. RECYCLABLE INDUSTRIAL MATERIAL.**

8 “(a) REQUIREMENTS.—A person that manages recy-
9 clable industrial material (other than recyclable industrial
10 material described in section 3024(a)(2)) shall be subject
11 to the following requirements:

12 “(1) IN GENERAL.—Recyclable industrial mate-
13 rial shall not be stored on land but shall be managed
14 in a building, tank, or other containment structure
15 that meets the following requirements.

16 “(A) IN A BUILDING.—Recyclable indus-
17 trial material that is managed in a building
18 shall be completely enclosed with a floor, walls,
19 and a roof and shall otherwise be reasonably
20 constructed to prevent exposure to the elements
21 and incorporate appropriate controls and prac-
22 tices to ensure containment of the recyclable in-
23 dustrial material.

24 “(B) IN A TANK OR OTHER CONTAINMENT
25 STRUCTURE.—A recyclable industrial material
26 that is managed in a tank or other containment

1 structure shall meet the technical requirements
2 of section 279.54 of title 40, Code of Federal
3 Regulations, or any successor regulation, not
4 including the requirements stated in—

5 “(i) the matter preceding paragraph
6 (a); and

7 “(ii) paragraphs (a), (f)(2), and
8 (h)(1)(i),

9 as those paragraphs are designated on the date
10 of enactment of this Act, notwithstanding that
11 the person managing the recyclable industrial
12 material may not be a used oil processor or re-
13 refiner under that section.

14 “(2) RECYCLING.—A recyclable industrial ma-
15 terial shall be recycled within 24 months after the
16 date on which the recyclable industrial material is
17 generated unless the Administrator by regulation es-
18 tablishes a shorter or longer period.

19 “(3) ADDITIONAL REQUIREMENTS.—

20 “(A) IN GENERAL.—A recyclable industrial
21 material shall be subject to such requirements,
22 in addition to those described in this section, as
23 the Administrator determines to be necessary.

24 “(B) CONSIDERATIONS.—In determining
25 whether any additional requirement is nec-

1 essary, the Administrator shall ensure that the
2 requirement does not discourage the recycling
3 of the recyclable industrial material, consistent
4 with the protection of human health and the en-
5 vironment.

6 “(b) PERMIT.—A person that manages a recyclable
7 industrial material in accordance with the requirements of
8 subsection (a) shall not be required to obtain a permit to
9 conduct recycling activity.

10 “(c) DOCUMENTATION.—

11 “(1) IN GENERAL.—A person that manages a
12 recyclable industrial material shall maintain docu-
13 mentation at the recycling facility to demonstrate
14 that the recyclable industrial material is recycled in
15 accordance with the requirements of this subtitle.

16 “(2) GUIDANCE.—Not later than 9 months
17 after the date of enactment of this subtitle, the Ad-
18 ministrator shall, after opportunity for public com-
19 ment, publish guidance identifying the criteria to be
20 considered by a person that manages a recyclable in-
21 dustrial material in making the demonstration re-
22 quired by paragraph (1).

23 “(d) INSPECTION AND ENFORCEMENT.—The Admin-
24 istrator may use the authority under sections 3007 and
25 3008 to conduct inspections and enforce this Act with

1 respect to a person that manages a recyclable industrial
2 material.

3 “(e) REFERENCES.—The Administrator shall amend
4 regulations, correspondence, orders, settlement agree-
5 ments, and other documents as appropriate to reflect the
6 management of recyclable industrial material under this
7 subtitle.”.

8 **SEC. 4. POINT OF DETERMINATION.**

9 (a) DEFINITIONS.—Section 1004 of the Solid Waste
10 Disposal Act (42 U.S.C. 6903), as amended by section
11 4(a), is amended by adding at the end the following:

12 “(55) POINT OF DETERMINATION.—The term
13 ‘point of determination’ means the point at which a
14 decision is made whether a solid waste is an identi-
15 fied characteristic waste or listed waste.”.

16 (b) IDENTIFICATION AND LISTING.—Section
17 3001(b)(1) of the Solid Waste Disposal Act (42 U.S.C.
18 6921(b)(1)) is amended by inserting after the second sen-
19 tence the following: “In addition, the Administrator shall
20 promulgate regulations specifying the point at which a
21 solid waste is an identified characteristic waste or listed
22 waste, which point of determination shall not be before
23 the point at which the waste exits a closed system and
24 is exposed to the environment or is discharged to a waste

1 management unit (as defined by the Administrator),
2 whichever point occurs first.”.

3 **SEC. 5. DISCONTINUATION OF REGULATION OF WASTE**
4 **UNDER SUBTITLE C OF THE SOLID WASTE**
5 **DISPOSAL ACT.**

6 (a) IDENTIFICATION AND LISTING.—

7 (1) AMENDMENTS.—Section 3001(f) of the
8 Solid Waste Disposal Act (42 U.S.C. 6921(f)) is
9 amended—

10 (A) by striking “(1) When” and inserting
11 the following:

12 “(1) DELISTING OF PARTICULAR WASTES.—

13 “(A) CONSIDERATION OF FACTORS.—
14 When”;

15 (B) by striking “(2)(A) To the maximum
16 extent practicable the Administrator shall pub-
17 lish in the Federal Register a proposal to grant
18 or deny a petition referred to in paragraph (1)”
19 and inserting the following:

20 “(B) DECISION.—To the maximum extent
21 practicable, the Administrator shall publish in
22 the Federal Register a proposal to grant or
23 deny a petition under subparagraph (A)”;

1 (C) by striking subparagraph (B) of para-
2 graph (2) as designated on the day prior to the
3 date of enactment of this Act; and

4 (D) by adding at the end the following:

5 “(2) GENERIC DELISTING.—

6 “(A) REGULATION.—The Administrator
7 shall issue a regulation that defines constituent
8 levels below which a solid waste shall not be
9 considered to be a hazardous waste subject to
10 the requirements of this subtitle (including reg-
11 ulations).

12 “(B) CONSTITUENTS OF CONCERN.—The
13 regulation under subparagraph (A) shall pro-
14 vide that only the constituents that are reason-
15 ably expected to be present in solid waste shall
16 be considered in determining whether the solid
17 waste is not considered to be a hazardous
18 waste.”.

19 (2) INTERIM CONSTITUENT LEVELS.—Until the
20 date on which the Administrator issues the regula-
21 tion under section 3001(f)(2) of the Solid Waste
22 Disposal Act, as added by paragraph (1)(D), the
23 land disposal restriction treatment levels under sec-
24 tion 3004(m) of that Act, as in effect on August 31,
25 1993, shall constitute the constituent levels below

1 which a solid waste shall not be considered to be a
2 hazardous waste.

3 (b) STANDARDS APPLICABLE TO OWNERS AND OP-
4 ERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE,
5 AND DISPOSAL FACILITIES.—Section 3004 of the Solid
6 Waste Disposal Act (42 U.S.C. 6924) is amended by add-
7 ing at the end the following:

8 “(z) SPECIAL STANDARDS FOR HAZARDOUS
9 WASTE.—

10 “(1) MODIFICATION OF REQUIREMENTS.—Not-
11 withstanding this section and sections 3005(j) and
12 7004(b), the Administrator may by regulation alter
13 to any extent the requirements of this section or sec-
14 tion 3005(j) or 7004(b) for a solid waste that is an
15 identified characteristic waste or listed waste and
16 that contains hazardous constituents in an amount
17 that is not greater than 10 times the amount below
18 which a solid waste shall not be considered to be a
19 hazardous waste.

20 “(2) REGULATION.—The Administrator—

21 “(A) shall issue a regulation under para-
22 graph (1) not later than 18 months after the
23 date of enactment of this subsection; and

24 “(B) in formulating the regulation—

1 “(i) shall take into account the lower
2 level of risk posed by the wastes described
3 in paragraph (1); and

4 “(ii) shall ensure that any modified
5 requirements protect human health and
6 the environment.

7 “(3) 10-TIMES LEVEL.—In issuing the regula-
8 tion under paragraph (2), the Administrator may
9 alter to any extent the 10-times level for modifying
10 the requirements of this section and sections 3005(j)
11 and 7004 so long as the changed requirements pro-
12 tect human health and the environment.

13 “(4) INTERIM RULE.—Until the Administrator
14 modifies the regulations under paragraph (1), a per-
15 son may dispose of a solid waste that is an identified
16 characteristic waste or listed waste and contains
17 hazardous constituents not greater than 10 times
18 the land disposal restrictions treatment levels issued
19 by the Administrator under section 3004(m), as in
20 effect on August 31, 1993, in a hazardous waste
21 management facility that meets the requirements of
22 this section, except that—

23 “(A) the requirements of subsections (d),
24 (e), (f), (g), (j), and (m) shall not apply;

“(B) the air emission standards issued by the Administrator under section 3004(n), as in effect on December 6, 1995, shall not apply to a tank or other container or to surface impoundment if the average volatile organic concentration of the hazardous waste at the point at which the waste is discharged into the tank, container, or surface impoundment is less than 500 parts per million by weight; and

“(C) the double-liner requirement stated in section 3004(o) may be waived by the Administrator for any monofill if the monofill meets the same requirements as are applicable under section 3005(j).

“(5) PERMIT.—No permit shall be required for storage and treatment in a tank or other container or containment building that meets the requirements of this section.”.

SEC. 6. RELATIONSHIP OF THE SOLID WASTE DISPOSAL ACT TO OTHER STATUTES.

Section 1006(b)(1) of the Solid Waste Disposal Act (42 U.S.C. 6905(b)(1)) is amended—

(1) by striking “(1) The Administrator” and inserting the following:

“(1) IN GENERAL.—The Administrator”;

1 (2) by striking the second sentence; and

2 (3) by adding at the end the following:

3 “(2) USE OF AUTHORITIES.—If the Adminis-
4 trator determines that a risk to health or the envi-
5 ronment associated with the management of solid
6 waste can be eliminated or reduced to a sufficient
7 extent by actions taken under the authorities con-
8 tained in such other Federal laws, and the Adminis-
9 trator has a statutory or court-ordered mandate to
10 address that risk to health or the environment with-
11 in 5 years after the date of enactment of this sen-
12 tence, the Administrator shall use the other authori-
13 ties to protect against the risk.”.

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